

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,
BHUBANESWAR.

Present:-

Shri M. K. Mishra, LL. B,
Addl. Sessions Judge, Bhubaneswar.

CRIMINAL TRIAL NO. 71 OF 2014

(Arising out of Bhubaneswar Khandagiri
PS Case No. 568/2013, corresponding
to CT Case No-4524/ of 2013, committed
by the SDJM, Bhubaneswar)

Date of argument- 22.12.2014

Date of Judgment- 23.12.2014

S t a t e -

Pabitra Kumar Naik, aged about 23 years, S/o: Damodar
Kumar Naik of village: Banamara Sabarsahi, Ghatikia, P.S.
Khandagiri, Dist: Khurda.

....Accused.

Advocate for the prosecution :Shri Asok Kumar Pattnyak,
Addl.P. P

Advocate for Accused :Shri P.K.Sahu and others, ADVs.

Offence Under Sections :363/366/376 of of Indian Penal
Code.

J U D G M E N T

The aforesaid accused namely: Pabitra
Kumar Naik has faced his trial being charged
U/s.363/366/376 of Indian Penal Code (hereinafter
referred as 'I.P.C.').

2. The case of the prosecution in short is that: the
informant Pradipta Kishore malla is the Head Master of
Bharatiya Vidya Niketan Boarding school of Ghatikia,
Kalinganagar. The victim girl was previously under the
custody of SOS, Chhend, Rourkela. She was given in the

custody of the boarding school of the informant to pursue her study. It is alleged in the FIR that, the victim girl aged about 15 years, on dtd.18.11.2013 at about 10 PM had removed cash from the bag of some of the inmates and departed from the Boarding. At the time of her departure, she had put one violet coloured chudidhar and one white and orange coloured Sweater. In spite of all efforts made by the informant, and others, the victim girl could not be traced out for which the FIR was lodged. However, in course of time, the victim girl was traced by some of the teachers of her institution during course of sports competition being organized at the playground of Ghatikia Saraswati Vidya Mandir. Thereafter, the teachers of that institution had taken the custody of the victim girl and informed the matter to the police, and police had arrived at the spot, apprehend the victim girl, examined the witnesses, arrested the accused, and forwarded him to the court on dtd.8.12.2013 relating to the offence U/s.363/376 of I.P.C. The IO had made a prayer to the court of Ld. SDJM, Bhubaneswar to record the statement of the victim girl U/s.164 of Cr.P.C. The witnesses were examined, the victim girl was sent to medical for her medical examination, and the medical examination report was received. On completion of investigation, the IO had submitted Chargesheet against the accused U/s.363/366/376 of I.P.C. Hence, this case.

It is revealed from the case record that the victim girl had taken shelter in the house of the accused, and subjected to the offence of rape by the accused.

3. The plea of the defence is that of complete denial of the prosecution story.

4. Points for determination in this case are:

i) Whether the accused on dtd.18.11.2013 after 10 PM had kidnapped the victim girl who was a minor by removing her out of her lawful guardianship by taking the victim girl to his house from the educational institution i.e. Bharatiya Vidya Niketan?

ii) Whether during the above noted date, time and place the accused had kidnapped the victim girl with intention to compel her to marry him?

iii) Whether the accused had committed rape on the victim girl in his dwelling house located at Sabarsahi, Ghatikia after 18.11.2013?

5. In order to prove it's case, prosecution has examined as many as 10 nos. of witnesses. Defence has examined none. The rest of the chargesheet witnesses have been declined by the prosecution considering the evidence of the victim girl, and the other witnesses. In this case prosecution has marked documents as per Ext.1 to Ext.2 series which include the FIR, and the signature of the informant on the body of the FIR, the medical examination report, the signature of the P.W.7 on the medical examination report etc.

On the other hand, no documentary evidence is adduced on behalf of the accused. No Mo is marked.

6. Considering the aforesaid facts and circumstances of the case, I have perused the evidence of the witnesses.

The P.W.1 is the father of the accused who has deposed that the victim girl had come to his house, and stayed there for about 10-15 days. The teachers of the victim girl on finding her at the playground had brought her. He has stated to have not examined by the IO in this case.

The P.W.2 namely: Smt. Janaki Nayak who is the mother of the accused had deposed that the victim girl was brought to her house by one Arati who happens to be the wife of the elder brother of her husband. The victim girl was resided in their house for about 15days. During her stay, one day she had gone to the playground in that village. At that time her teachers located her there, and had taken her to their custody. The evidence of P.W.1 and P.W.2 indicate that during the stay of the victim girl in their house no restriction was imposed on her and she was at liberty to proceed to anyplace. It is also made clear by them that the victim girl was brought there for her stay by one Arati who found her.

The P.W.3 who happens to be a teacher of the school of the victim girl has stated that during the night time on 18.11.2013 at about 9-10 PM after the students of the boarding had taken their night meal they came to the place of washing in order to clean their respective utensils. At that time one Alok Moharana a teacher of that school noticed that the victim girl was missing. Again on 7.12.2013 at 3 PM while a sports activity was in progress in the filed located near Saraswati Vidyamandir, Ghatikia.

There they found the victim girl. The informant, and another teacher had informed her regarding the presence of the victim girl in that field. The matter was then informed to police. The PCR van arrived there, and the victim girl was taken by police. It is revealed from the evidence of P.W.3 that the victim girl had informed her that she was not intending to return back to her school, and that she had fallen in love with the accused, and intended to marry him.

The P.W.4 who is the informant of this case has reiterated the evidence of the P.W.3 regarding the missing of the victim girl, and regarding tracing her out in the playground. He has stated that after the victim girl was found, the matter was informed to police. Police had taken the custody of the victim girl.

The P.W.5 who is another teacher of the said school has stated regarding the missing of the victim girl from the boarding school and the matter was informed to police as she could not be traced.

The P.W.7 is the Medical Officer who has medically examined the victim girl on police requisition. According to her, the victim girl was aged about 18-20 years, and had no bodily injury on her person. There was no sign and symptom of recent sexual intercourse. The cross-examination of P.W.7 discloses that she had not found any injury on the body of the victim lady. The witness categorically stated that basing on ossification test she has opined the age of the victim lady to be about 18-20 years.

The P.W.8 has deposed that about a year back at

about 10 PM a girl had come to her house while she she ascertained regarding the reason for her coming to her house, the victim girl had informed her that she had come to commit suicide. So, she instructed the P.W.2 to give shelter to that girl during the night in their house till the morning. The girl remained in the house of P.W.2 for 15 days. Except this, she has no other knowledge regarding the case.

The P.W.9 is the victim girl herself. Her evidence indicates that she knows the informant. But she revealed her ignorance relating to her acquaintance with the accused. She has further deposed that she had no knowledge regarding the facts of this case. The victim girl was examined by the prosecution U/s.154 of I.P.C and some leading questions were put to her. But she has not supported the case of the prosecution in any manner nor she has disclosed any incriminating fact touching the allegation against the accused.

The P.W.10 has deposed that she had taken the custody of the victim girl, and brought her to SOS, Chhend. Except this no other material is available in the case record.

7. The allegation levelled against the accused by the prosecution indicates that he had kidnapped the victim girl in order to compel her to marry him, and he committed rape on her. But in the instant case, there is absolutely no direct or indirect evidence that the victim girl was ever kidnapped by the accused or if he has compelled her at any point of time to marry him. Apart from that, there is no grain of evidence at all in this case record that the victim

girl was raped either by the accused or by any other person. The medical report of the victim girl and the evidence of the MO indicate that there is no sign of or symptom of rape. Rather the evidence of the independent witnesses belonging to the village: Ghatikia Sabarsahi indicate that the victim girl had come to the house of one Arati Naik after 10 PM on the date of her missing, and that she was given shelter by the parents of the accused, where she stayed for about 15 days. She was found by her teachers in the playground and thereafter the matter was informed to police, and police had taken legal action against the accused. But there is no basis coming from the mouth of any witnesses to implicate the accused in this case.

8. Hence, I find that there is absolutely no clinching oral evidence coming from the mouth of any of the witnesses including the victim girl, the case of the prosecution is extremely weak. Accordingly, after going through the evidence on record and taking into consideration the oral, and documentary evidence, I am of opinion that the prosecution has miserably failed to prove its case U/s. 363/366/376 of I.P.C, against the accused beyond all reasonable doubt, and the accused is found not guilty thereunder, and he is acquitted as per provision 235(1), Cr. P. C. He be set at liberty forthwith.

Addl. Sessions Judge, Bhubaneswar.

Typed to my dictation, corrected by me and pronounced in the open Court today this the 23rd day of December, 2014 given under my signature and seal of this Court.

Addl. Sessions Judge, Bhubaneswar.

List of witnesses examined for the prosecution

P.W.1 Damodar Nayak
P.W.2 Smt. Janaki Nayak
P.W.3 Alok Prabha Mohanty
P.W.4 Pradipta Kishore Malla
P.W.5 Susanta Kumar Pradhan
P.W.6 Alok Kumar Moharana
P.W.7 Dr. Arati Satpathy
P.W.8 Smt. Aratii Behuri
P.W.9 Jharana Kumari
P.W.10 Smt. Prabhati Dei

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

Ext.1 FIR
Ext.1/1 Signature of P.W.4 on Ext.1
Ext.2 ME report
Ext.2/1 Signature of P.W.7 on Ext.2
Ext.2/2 Signature of Minati Swain in Ext.2
Ext.2/3 Signature of Purusottam Majhi in Ext.2.

List of Exts. Marked on behalf of the defence

Nil.

List of M.Os marked on behalf of the prosecution

Nil

List of M.Os marked on behalf of the defence

Addl. Sessions Judge, Bhubaneswar.